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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

TYRONE L. ADAMS,

Plaintiff and Appellant,

v.

CHARLES L. EASLEY et al.,

Defendants and Respondents.

C081016

(Super. Ct. No. CVCS-11-0470)

Plaintiff Tyrone L. Adams, representing himself, appeals from a judgment and an order of \$7,608 in appellate attorney's fees and costs in favor of defendants, who owned real property Adams had rented. The judgment from which Adams purports to appeal was the subject of an earlier appeal; therefore, that judgment is final and not cognizable in this appeal. Concerning the award of attorney's fees and costs, we conclude that the rental agreement between Adams and defendants only authorized an award of attorney's fees up to \$800, which was already awarded in the underlying action. Accordingly, we dismiss the appeal as to the final judgment and modify the award of appellate attorney's fees and costs.

BACKGROUND

Sometime before 2013, Adams sued defendants who are owners of real property in Sutter County. He alleged that he entered into a rental agreement to inhabit defendants' real property but that he was unable to live on the real property for various reasons. He alleged uninhabitability of the property and that he was subjected to racial discrimination.

On June 25, 2013, the trial court, having granted defendants' motion for summary judgment, entered judgment in favor of defendants.

Adams filed a notice of appeal from the judgment. However, he failed to file a timely opening brief, and this court dismissed the appeal on March 30, 2015. After the California Supreme Court denied Adams's petition for writ of mandate, we issued a remittitur on June 15, 2015, awarding costs on appeal to defendants. The remittitur stated that the order dismissing Adams's appeal "has now become final." Adams filed three motions to recall the remittitur, each of which we denied.

On August 31, 2015, the trial court issued an order awarding defendants appellate attorney's fees and costs in the amount of \$7,608. The order stated: "On July 27, 2015, defendants filed their motion for attorney fees and costs. The matter was argued and submitted for decision on August 31, 2015. Having read and considered all the pleading in support and in opposition to that motion and the arguments given, it is ordered . . . [¶] . . . [d]efendants shall recover from plaintiff the sum of \$7,608."

Also on August 31, 2015, the trial court denied Adams's motion to vacate the judgment filed on June 25, 2013. The order did not give the trial court's reasons for denying the motion to vacate the judgment, and Adams, as far as we can discern, has not included the motion or opposition to the motion in the appellant's appendix.

On September 24, 2015, the trial court issued another order. Again, there are no motions or requests leading up to the order in the appellant's appendix. The new order stated Adams had filed (1) a "Motion for Reconsideration of Plaintiff's Motion to Reverse," (2) a "Motion for Civil Judgment," and (3) a "Motion Invoking Federal Jurisdiction." The trial court commented in its order, "Plaintiff previously filed an appeal in this action before the Third District Court of Appeal[] (C074759). That appeal was denied and a remittitur issued on June 15, 2015. The California Supreme Court denied plaintiff's writ application on September 9, 2015. [¶] This Court's judgment has been conclusively sustained, and this litigation is ended for all purposes other than plaintiff's

motion for reconsideration of my order on defendants’ cost motion. *Griset v. Fair Political Practices* (2001) 25 [Cal.4th] 688.” The trial court therefore concluded: “The only motion the court shall hear is the Motion for Reconsideration etc. . . . All other motions are vacated and shall not be heard.”

After the trial court awarded attorney’s fees and costs to defendants and denied Adams’s motion to vacate the prior judgment, Adams filed two notices of appeal. Each of the notices of appeal featured a checkmark in the box indicating that the appeal was from a “[j]udgment after an order granting summary judgment motion.” In his opening brief, Adams explains that this “appeal is from a final judgment and an order granting [defendants’] motion for attorney’s fees and costs.” Because Adams makes no mention in his opening brief of the order denying his motion to vacate the judgment, we do not discuss that motion in this opinion.

DISCUSSION

Even though there are 38 numbered contentions in Adams’s opening brief, they can be sorted into two types: those challenging the final judgment in case No. C074759 and those challenging the award of appellate attorney’s fees and costs. We therefore consider Adams’s contentions concerning the final judgment and the order granting appellate attorney’s fees and costs separately.

I

In many of his contentions on appeal, Adams contends the trial court’s judgment entered on June 25, 2013 was erroneous for various reasons. We need not treat separately each of these contentions because they are not cognizable in this appeal.¹ The time to challenge that final judgment expired long ago.

¹ The opening-brief contentions in which Adams challenges the final judgment in case No. C074759 are numbered VI-XXIV (6-24), XXVI-XXVII (26-27), XXX (30), and XXXIII-XXXVII (33-37).

Once the appeal process has been exhausted, a judgment is final as to the parties. It is not subject to relitigation, except under circumstances not present here (for example, if the defendant did not have proper notice (see *Pennoyer v. Neff* (1877) 95 U.S. 714 [24 L.Ed. 565]) or the judgment was void (see *Pioneer Land Co. v. Maddux* (1895) 109 Cal. 633)).

The dismissal of an appeal is, in effect, an affirmance of the judgment. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 762, p. 835.) After an affirmance, the trial court has no authority to reopen litigation concerning the judgment. “A general or unqualified affirmance ordinarily sustains the judgment and *ends the litigation*.” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 853, p. 916, italics added.) Thus, the judgment entered June 25, 2013 and concerning which Adams’s appeal was dismissed on March 30, 2015 cannot now be relitigated.

The proper disposition of an appeal that seeks to relitigate a prior judgment is dismissal. (*Burks v. Bronson* (1922) 58 Cal.App. 143, 144.) Therefore, to the extent defendant purports to appeal from the June 25, 2013 judgment, we must dismiss the appeal.

II

Adams’s remaining contentions relate to the trial court’s award of appellate attorney’s fees and costs entered by the trial court after we dismissed Adams’s appeal from the final judgment.² The remittitur from the prior appeal allowed defendants “to recover costs on appeal.”

Working through Adams’s numerous contentions about appellate attorney’s fees and costs, we find one contention that has merit: the parties’ rental agreement, under

² The following parts of Adams’s opening brief mention the award of attorney’s fees and costs: I-V (1-5), XXV (25), XXVIII-XXIX (28-29), XXXI-XXXII (31-32), and XXXVIII (38).

which defendants claimed the right to an award of attorney's fees, limited such fees to \$800. None of the remaining contentions concerning attorney's fees and costs have merit.

After we issued a remittitur in case No. C074759, which awarded costs on appeal to defendants, defendants filed a motion for appellate attorney's fees and costs. The motion cited, among other authorities, Code of Civil Procedure section 1033.5, Civil Code section 1717, and the parties' rental agreement as authority for an award of attorney's fees. Code of Civil Procedure section 1033.5, subdivision (a)(10)(A) allows attorney's fees as an element of costs if authorized by a contract between the parties. Civil Code section 1717, subdivision (a) also authorizes an award of attorney's fees to the prevailing party if the contract specifically provides for it.

The rental agreement between Adams and defendants, executed on March 27, 2009, contained an attorney's fees clause. Paragraph 38 provided: "ATTORNEY FEES: In any action or proceeding arising out of this Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs" However, an addendum to the rental agreement provided: "ATTORNEY FEES: paragraph 38 of the Rental Agreement is hereby limited to \$800.00 attorney fees plus court costs incurred." (The rental agreement and addendum are part of the record on appeal at appellant's appendix pages 1995 to 2001.) Adams raised the issue of the rental agreement and Civil Code section 1717 in his argument on the costs motion in the trial court even if he did not clearly articulate the \$800 limitation on attorney's fees. However, in the hearing on his motion for reconsideration, he expressly raised the \$800 limitation.

In the motion for appellate attorney's fees and costs, defendants requested \$4,908 in attorney's fees for work on the appeal, plus \$2,640 in attorney's fees for work on the motion for appellate attorney's fees and costs. Defendants also sought \$60 in costs on appeal for a filing fee. The total requested for appellate attorney's fees and costs was

\$7,608, which the trial court awarded. In the motion, defendants acknowledged that attorney's fees and costs incurred in the underlying action had already been awarded. Because it is difficult to determine what is contained in appellant's appendix, we take judicial notice, on our own motion, of the Order on Defendants' Motion for Attorney Fees and Costs filed on September 3, 2013, which awarded defendants \$97,677.50 in attorney's fees in the underlying action. Although the judgment in that action is final and the validity of the September 3, 2013 attorney's fee award is not properly before us, we conclude that under the circumstances, the trial court should not have awarded additional *appellate* attorney's fees in this matter.

Defendants assert in their respondents' brief that we should reject this and all other contentions about the award of appellate attorney's fees and costs because (1) Adams's opening brief is so deficient that it should be struck or disregarded, and (2) Adams fails to explain how the trial court abused its discretion.

While we agree that Adams's opening brief is far too long and chaotic in its organization, we decline to strike it or disregard it because some contentions are discernible. (See Cal. Rules of Court, rule 8.204(e)(2)(C) [court has discretion to disregard deficiencies in briefs].) One of the contentions evident from a reading of Adams's opening brief is that the rental agreement expressly limited an award of attorney's fees to \$800. The contention pinpoints a legal error in the attorney's fees award -- that the rental agreement, which was the authority for awarding attorney's fees (Civ. Code, § 1717), allowed only for an award up to \$800.

We disagree with defendants concerning whether Adams has shown an abuse of discretion. A trial court enjoys broad discretion in determining what is a reasonable attorney's fee. (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 249.) But awarding attorney's fees without authority for making that award is an abuse of discretion. (*Young v. Redman* (1976) 55 Cal.App.3d 827, 834, 839.)

Having determined that the award of appellate attorney's fees was unsupported, we turn to the \$60 award of costs on appeal other than attorney's fees. We have reviewed Adams's contentions having to do with the award of attorney's fees and costs and discern no argument that the award of appellate costs other than attorney's fees was unjustified or unreasonable.

We awarded defendants costs on appeal, so stating in the remittitur. The sole cost claimed by defendants was \$60 for a filing fee. We find nothing in Adams's briefing challenging the right of defendants to recover that cost under our order in the remittitur in case No. C074759. The award of that cost must therefore be affirmed.

DISPOSITION

To the extent the appeal is from the judgment entered June 25, 2013, the appeal is dismissed. The order awarding appellate attorney's fees and costs is reduced to \$60 for costs and is affirmed as modified. Each party shall bear its own costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

/S/
MAURO, Acting P. J.

We concur:

/S/
MURRAY, J.

/S/
KRAUSE, J.